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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,469	02/28/2002	Fred S. Cannon	823.0115USU	4846
7590	12/01/2004			EXAMINER
JASON A. BERNSTEIN, ESQUIRE BERNSTEIN & ASSOCIATES 6600 PEACHTREE DUNWOODY ROAD, NE EMBASSY ROW 400, SUITE 495 ATLANTA, GA 30328			HENDRICKSON, STUART L	
			ART UNIT	PAPER NUMBER
			1754	
			DATE MAILED: 12/01/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	16185469	Cannoh
Examiner	Group Art Unit	
Hendrickson	1754	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

Responsive to communication(s) filed on 9/7/04

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

<input checked="" type="checkbox"/> Claim(s) <u>1-44</u>	is/are pending in the application.
Of the above claim(s) <u>9-25</u>	is/are withdrawn from consideration.
<input checked="" type="checkbox"/> Claim(s) <u>18, 36-40</u>	is/are allowed.
<input checked="" type="checkbox"/> Claim(s) <u>26-29, 31-35, 41-44</u>	is/are rejected.
<input checked="" type="checkbox"/> Claim(s) <u>36</u>	is/are objected to.
<input checked="" type="checkbox"/> Claim(s) <u>1-44</u>	are subject to restriction or election requirement

**Application Papers**

- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119 (a)-(d)**

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All  Some\*  None of the:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received  
in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

**Attachment(s)**

<input type="checkbox"/> Information Disclosure Statement(s), PTO-1449, Paper No(s). _____	<input type="checkbox"/> Interview Summary, PTO-413
<input type="checkbox"/> Notice of Reference(s) Cited, PTO-892	<input type="checkbox"/> Notice of Informal Patent Application, PTO-152
<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review, PTO-948	<input type="checkbox"/> Other. _____

**Office Action Summary**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 26-29, 31-35, 41-44 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hirahara et al 6064560.

The reference teaches active carbon. Where the examiner has found a substantially similar product as in the applied prior art the burden of proof is shifted to the applicant to establish that their product is patentably distinct not the examiner to show that the same process of making, see *In re Brown*, 173 U.S.P.Q 685, and *In re Fessmann*, 180 U.S.P.Q. 324. It is noted that no product characteristics define the claimed product.

Applicant's arguments filed 9/7/04 have been fully considered but they are not persuasive.

The claims being rejected are not drawn to the properties argued; no differences have been shown. The IDS had no fee or certification, and thus was not considered. The nonelected claims should be cancelled, amended (see *In re Ochiai*) or petitioned.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.



Stuart Hendrickson  
examiner Art Unit 1754